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does not interfere with the rights of the municipality below the surface for sewers and pipes for water, gas, and other proper purposes, it follows that the owner has the right, subject to reasonable municipal regulation, to make openings in the sidewalk to give access to the area beneath; but he is bound so to construct and cover the opening that it shall at all times be as safe for the use of the public as if it did not exist, and public travel over the same be not unreasonably interfered with. The city has the right to require the appellant to procure a permit before making an opening in the sidewalk, and it has the right to see that the proper safeguards are thrown about the work, and that in its progress the right of the public to use the sidewalk is not unreasonably interfered with. It may also regulate how the excavation shall be made, and the trap-doors or other appliances for closing the opening constructed; but it may not arbitrarily refuse to grant a permit, nor, under the guise of regulation, place an additional burden upon the abutting owner, or make such regulations as would in effect deprive him from exercising the rights recognized in this decision."

Handwriting—Knowledge Obtained from Family Correspondence as Qualifying Witness to Testify to Genuineness of Signature.—In Johnston *v.* Bee, 100 S. E. 486, 7 A. L. R. 252, the Supreme Court of Appeals of West Virginia held that grandchildren, who have obtained their knowledge of their grandmother's handwriting only by inspection and repeated readings of letters from the grandmother to their mother, preserved by the family for a long period of time for sentimental reasons, are qualified to testify to their opinions as to the genuineness of the grandmother's signature.

The court said in part: "A decided weight of authority affirms the right of an interested person or party to testify to the handwriting of a signature purporting to be that of a deceased person, if he is otherwise qualified, even though he would be an incompetent witness to testify to the act of signing. In Iowa, Massachusetts, New York, North Carolina, Texas, and Wisconsin the courts hold that such testimony involves no more than a matter of opinion, and does not relate to a personal transaction or communication between the witness and the decedent. 40 Cyc. 2327; Ware *v.* Burch, 148 Ala. 529, 42 So. 562, 12 Ann. Cas. 669, note 671; 25 Am. & Eng. Enc. Law, 261. On the other hand, the contrary has been held in Alabama, Georgia, Kentucky, Missouri, and Pennsylvania, as will be seen by reference to the books already cited. The intermediate court of appeals of Indiana has apparently held both ways as to such testimony. Merritt *v.* Straw, 6 Ind. App. 360, 33 N. E. 657; Shirts *v.* Rooker, 21 Ind. App. 420, 52 N. E. 629. The decisions adopting the minority rule take the view that, inasmuch as proof of the signature authenticates

or validates the document constituting the basis of the action, it virtually covers the whole case, and impliedly proves the entire transaction represented by the document. If, however, the ultimate effect of evidence admitted against the estate of a deceased person were the sole test of admissibility, much evidence not related to personal transactions or communications would be inadmissible. Much authority and the terms of the statute deny that it is the true test. As to facts not amounting to or involving such transactions or communications, interested witnesses are competent. This is an unqualified and unlimited implication arising from the very words of the statute. There is no proviso saying they are competent only in the event that the fact has only limited probative force respecting the right involved or none at all. The statutory test is whether the fact in question is a personal transaction or communication or involves one. Davidson *v.* Browning, 73 W. Va. 276, L. R. A. 1915C, 976, 80 S. E. 363. The chief purpose of the statute is to prevent the living party to a transaction from testifying because the other, being dead, cannot be produced to contradict him, in case of false swearing. Denial of right to the former to testify puts them on an equality. Faulkner *v.* Thomas, 48 W. Va. 148, 35 S. E. 915. If so, its reason does not apply here. One party cannot very well contradict another's mere opinion. Whether the witnesses in question were competent depends upon the means by which they obtained the knowledge of the handwriting of the decedent, constituting the basis of their opinions. They are not disqualified by reason of the nature of the fact to which their testimony relates. The witnesses now under consideration, parties plaintiff, derived their knowledge of the handwriting of Mrs. Bee from letters written by her to their mother, in their early childhood, preserved by their mother until her death, and by them afterwards for sentimental reasons, and frequently read and perused. These letters were not communications between them and Mrs. Bee, and they make no claim to any other source of knowledge of her handwriting. Their inspection of these letters also qualified them to express opinions as to the genuineness of the signature in question. There could scarcely be a better index to the genuineness of the letters than their preservation as heirlooms, tender remembrances, or sacred relics for more than forty years. Besides, it is clearly revealed by their contents—messages of solicitude, advice, and love from mother and daughter. What is better calculated to make an impression on the minds of grandchildren than the written messages of their living grandmother to their dead mother? An administrator, having examined the papers of his intestate, may testify to his signature. Sharp *v.* Sharpe, 2 Leigh (Va.) 249; Tucker *v.* Kellogg, 8 Utah, 11, 28 Pac. 870. A clerk through whose hands the correspondence of a deceased person with his employer has passed may testify as to the signature of the decedent. Rex *v.* Slaney, 5

C. & P. 213; Reid *v.* Hodgson, 1 Cranch C. C. 491, Fed. Cas. No. 11, 667; Reyburn *v.* Belotti, 10 Mo. 597; Titford *v.* Knott, 2 Johns. Cas. (N. Y.) 211. A member of a family is qualified by reason of his knowledge of family correspondence in which he had no part. Tuttle *v.* Rainey, 98 N. C. 513, 45 S. E. 475."

Inns and Innkeepers—Distinction between "Innkeeper" and "Boarding House Keeper."—Plaintiff engaged a room at the Standish Hotel at Portland, Or., on January 16, 1915, and occupied the same until April 4, 1915, and afterward, on April 18, 1915, he again engaged another room and occupied it until March 18, 1917, paying a fixed monthly rental. During this later period his room was forced open, and three suits of clothes and other property were stolen. He brought an action to recover for the loss of his clothing. His right to recover turned upon whether he occupied the relation of a "guest" or "lodger."

The Supreme Court of Oregon (McIntosh *v.* Schops, 180 Pacific Reporter, 593), in reversing a judgment for plaintiff and directing a nonsuit, points out the distinction between an "innkeeper" and "boarding house keeper" in an interesting opinion by Judge Bennett. The opinion states:

"The distinction at common law between an innkeeper and a boarding or lodging house keeper was that the innkeeper catered to the traveling public—the transient traveler, who, in passing through the country, stopped from day to day in the pursuit of his travels. The lodging house or boarding house keeper, on the other hand, took care of more permanent customers, who remained for longer periods, and more or less permanently, in the same place.

"The innkeeper has always been held to a very high degree of responsibility, and if the property of his guest was stolen while under his roof, even without his fault, he was generally liable therefor. But it seems well established that before he incurred this strict liability it must appear, not only that he was an innkeeper or hotel keeper, but also that the party he was entertaining should sustain the relationship of 'guest.' The same innkeeper, who sustained that relationship to such as were 'guests,' might be only a lodging or boarding house keeper as to other persons who were staying with him permanently, and were not therefore 'guests,' within the technical meaning of the word."

Because the plaintiff's occupancy of the room was of a permanent nature, at a fixed rental, he was held to be a lodger and his right to recover denied.

Taxation—Salary of Federal Judges.—In Evans *v.* Gore, 40 Sup. Ct. Rep. 550 the Supreme Court (Mr. Justice Holmes dissenting)